IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1036 of 2003
in
SPECIAL CIVIL APPLICATIONNo 5659 of 2003
with
CIVIL APPLICATION NO. 6925 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT RAJYA ARDHA SARKARI AUDHYOGIK KARMACHARI SANGH
Versus
GENERAL MANAGER

Appearance:
1. LETTERS PATENT APPEAL No. 1036 of 2003
MR PH PATHAK for Appellant No.
M/S TRIVEDI & GUPTA for Respondent No. 1-2
DS AFF.NOT FILED (N) for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 09/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

Admit. Ms.Shethna learned advocate waives service of notice on behalf of respondents. With consent of the learned counsel for the parties, appeal is fixed for hearing forthwith.

Heard Mr.Pathak learned advocate for the appellant and Ms.Shethna learned advocate for the respondents. Mr.Pathak has taken us through the order passed by the learned single Judge in a petition filed by the appellant being S.C.A.no.5659 of 2003 on 19.09.2003 wherein the appellant has challenged the order passed by the Industrial Tribunal dated 16.04.2003 below exh. 5. It is the contention of Mr.Pathak that when the appellant has challenged the said order by way of preferring S.C.A. raising several contentions in respect of the rejection of the application exh. 5, the learned single Judge has merely dismissed the petition in limine by observing that no ground for interference is made out, though the learned single Judge has, in the earlier part of the order, referred to about the case of the petitioner before the Industrial Tribunal and the order passed below application exh. 5 by the Tribunal in pending reference being Reference (ITC) no. 6/03. Mr.Pathak has placed reliance in the matter of Union of India and Anr. V/s B.M.Raval and Ors. dated 08.08.03 while disposing of Civil Appeal no. 6289/03. In the said decision, the Supreme court has, on examining the order passed by the High court in S.C.A.no.706/00 dated 20.12.2000, observed as under :

" It is not clear from the order under challenge as to which are the decisions or principles the court had in mind. The High Court should not have disposed of the matter so summarily. On this only ground, the order of the High Court is set aside, as proposed and the matter is remitted to the High Court. The High Court shall restore the proceedings to its original file and after hearing both sides will dispose of the matter afresh on merits. The parties are at liberty to raise all such contentions as are permissible for them in accordance with law."

Mr.Pathak has also relied on the order passed in L.P.A.no.684/02 decided on 20.01.2003 in the matter of

State of Gujarat V/s Jayantibhai Venabhai Patel. In light of the averments made by Mr.Pathak and in view of the order under challenge, it is his contention that the learned single Judge ought not to have dismissed the petition without assigning any reasons by observing that no interference is required. Ms.Shethna learned advocate for the respondents has vehemently urged that this court will not interfere with the order under challenge. It is her contention that when the petition was filed by the respondent-workman is an order which was passed by the Industrial Tribunal on an application which is an interlocutory application and when the Tribunal has not found the case in favour of the appellant and when the Tribunal has rejected the application at exh. 5 and in turn when the learned single Judge has on examining the said order has thought that no interference is required, it is her contention that this court will not entertain this appeal. We are not expressing anything on the contentions raised by the learned counsel for the parties as well as the maintainability of the appeal. The question which we are required to consider in light of the decision of the Apex Court as well as the decision of the Division Bench of this court, the learned single Judge ought to have assigned reasons in respect of the contentions raised in the petition by the counsel appearing for the parties and the learned single Judge even while giving reasons, could have passed the same order by rejecting the petition. In the present case, the order passed by the learned single Judge only indicates that no interference was required in the order under challenge and the petition was dismissed. In view of this, we are of the view that the learned single Judge ought to have passed reasoned order as no reasoned order is passed dealing with the contentions raised in the petition as well as by the counsel for the respondent. It will be in the fitness of things to set aside the order under challenge passed by the learned single Judge with the direction that the S.C.A. be restored to file and the learned single Judge shall examine the contentions raised in the petition as well as the contentions raised on behalf of the respondents and pass appropriate order in accordance with law. We may also observe that the industrial dispute reference is very much pending before the Industrial Tribunal and it is only application exh. 5 which is decided. We are of the view that the S.C.A. be placed before the court for consideration on merits before the learned single Judge on 13.01.2004, with the consent of the learned counsel for the parties. Interim relief granted earlier which is in force till today to continue on the same terms till then. In view of the order passed in the main letters

patent appeal, civil application is disposed of.

(D.K.TRIVEDI, J)

(SHARAD D DAVE, J)

srilatha